APPENDIX

Listed below are relevant docket entries, relevant pleadings, findings, conclusions, opinions, judgment order and decision, and other parts of the record to which the parties wish to direct the Court's attention.

Judge's Decision on Motion for Summary Judgment, dated October 6, 1981..... A-1 through A-16

Judgment of Court of Appeals Affirming Summary Judgment, dated August 20, 1982..... A-17

Denial of Motion for Rehearing, dated October 18, 1982..... A-18

Letter dated August 17, 1978 from Morris to Bank denying Bank's claim for acts of Knight (Exhibit Numbers 00507 & 00508)..... A-19 & A-20

Letter of rescission to Toney Brothers Bank, dated 11/2/78 (Exhibit Numbers 00508 & 00509) as referred to in Morris deposition, page 68)..... A-21, A-22

Morris deposition, pages 26, 27, 28, 29, 59, 62-65, 68-75, 87, 95-99 and 117 (Exhibit "D")..... A-23 through A-45

Altered renewal application dated September 26, 1977, with 1/7/77 date inserted (Exhibit Numbers NUFO-178, 179, 180 & 181)..... A-46 through A-49

Quaif deposition, pages 16, 17 & 18 (Exhibit "C"..... A-50 through A-52

Renewal application dated September 26, 1977, as signed by A. T. Knight (Exhibit Numbers 10190-Q-3-A, B, C & D) as referred to in Quaif deposition, pages 16, 17 & 18..... A-53 through A-56

Exhibit Numbers 1-65-Q-3, 4, 5, 6, 7 & 8, as referred to in Quaif deposition, pages 16, 17 & 18..... A-57 through A-62

Exhibit "E" - Required Underwriting Information from defendant's Director's & Officers Underwriting Manual (R-363)..... A-63, A-64

Notice Of Appeal To The Supreme Court Of The United States, dated November 11, 1982..... A-65

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ALTANTA DIVISION

A. T. KNIGHT, G. GERALD KUNES, and KUNES AND KUNES	§	
vs.	§	CIVIL ACTION No. C80-300A
NATIONAL UNION FIRE INSURANCE COMPANY of PITTSBURGH, PA., et al.	§	

ORDER

This action is a dispute over the coverage of an insurance policy. It is before the Court on a Motion for Summary Judgment by Defendant National Union Fire Insurance Company, a Motion for Partial Summary Judgment by Plaintiffs, and two Motions to Compel Discovery by Plaintiffs.

The Court finds the following material facts to be undisputed: Plaintiff A. T. Knight was at all relevant times an officer and director of

Defendant Toney Brothers Bank ("the Bank"). On February 27, 1976, the Georgia Department of Banking and Finance issued a Cease and Desist Order to Toney Brothers Bank concerning its practice of permitting the indebtedness of a director to exceed the limit on loans to a single borrower imposed by Ga. Code §41A-1306 (b). On March 12, 1976, Knight acknowledged receipt of the Cease and Desist order by letter to the Department of Banking and Finance. On March 18, 1976, Knight notified the Hartford Accident and Indemnity Company, which had issued a Blanket Bankers Bond to Toney Brothers Bank, of the existence of the Cease and Desist Order; Hartford immediately cancelled the Bond.

On August 3, 1976, Toney Brothers Bank filed an application with Defendant National Union Fire

Insurance Company ("National Union") for Directors and Officers Legal Liability Coverage. On January 7, 1977, Toney Brothers Bank filed a second *application [606] on an identical form with National Union. Both applications were signed by Knight on behalf of Toney Brothers Bank. Question 14 of each application inquired, "Has this Financial Institution ever received a Cease and Desist Order from any Supervisory Authority? If so, give details." On both applications, Knight responded "No." National Union issued Directors and Officers Liability and Corporation Reimbursement Policy Number 304 21 61, effective December 1, 1976 to December 1, 1977, in reliance on the information contained in one or both of these applications. Toney Brothers never filed any claim with National Union under

this policy. This policy bears a notation on its first page that it was typed out on January 21, 1977.

On September 26, 1977, Knight submitted a renewal application on behalf of the Bank to National Union. Paragraph 9 of that application read as follows:

> It is agreed that this renewal application is a supplement to the application completed on _____ and that application together with this renewal supplement constitute the complete application that shall be the basis of the contract and will be attached to and form part of the policy.

In reliance on representations in the renewal application and the initial applications, National Union issued to Toney Brothers Bank the policy at issue in this case, policy number 651 71 27 (the "renewal policy"), which was to have been effective from December 1, 1977 to

December 1, 1978. When this policy was issued, the renewal application was attached to it, but neither of the original applications were.

On October 18, 1978, Knight employed Plaintiffs G. Gerald Kunes and Kunes & Kunes (collectively "Kunes") to represent him in a lawsuit brought against Knight, National Union and another director of Toney Brothers Bank by two stockholders of the Bank. Kunes had been Knight's personal lawyer for several years. Kunes later represented Knight in other lawsuits brought against him concerning his handling of Bank affairs. On November 2, 1978, by letter from *its [607] counsel to Toney Brothers Bank, National Union notified the Bank of its decision to treat policy number 651 71 27 as void ab initio on the basis of

"material representations in the application forms... of January 7, 1977 and September 26, 1977." That letter went on to state:

> While the misrepresentations are not limited to the responses to questions 18, 19 and 20 of the January application, we refer you to the responses in question for specific instances of material misrepresentations. Among other things, it is the position of the National Union that loans to directors individually or to the corporations or other firms in which any director had more than a 10% interest are not fully set forth in the application form.

Question 18 of the January 7, 1977 application requested information regarding loans to directors and corporations in which directors owned more than a 10% interest; the Bank had provided a schedule of such loans, which National Union apparently thought inadequate. National Union's letter of November 2,

1978 enclosed a check for the amount of premium paid by Toney Brothers Bank and the interest thereon. Toney Brothers Bank refused the tendered check. The Bank later failed and was taken over by the Federal Deposit Insurance Corporation, which ultimately accepted the returned premium on the Banks' behalf.

On the basis of these indisputed facts, National Union moves for summary judgment on the basis of Ga. Code §56-2409. that statute provides in relevant part:

> Misrepresentations, omissions, concealment of facts, and incorrect statements [in an application for insurance] shall not prevent a recovery under the policy or contract unless:
> (1) Fraudulent; or
> (2) Material either to the acceptance of the risk, or to the hazard assumed by the insurer....

National Union agrues that Knight's negative response to question 14 on the January 7, 1977 application was material misrepresentation within the meaning of Ga. Code §56-2409(2) which rendered the insurance contract void ab initio. Plaintiffs have responded to National Union's Motion for Summary Judgment by *filing a Motion for Partial [608] Summary Judgment on liability alone, in which they contend that National Union has refused to pay properly submitted claims on a valid policy, and is estopped from claiming that the renewal policy was void ab initio.

Plaintiffs do not dispute that Knight's response on behalf of the Bank to question 14 on the August 3, 1976 and January 7, 1977 applications was a misrepresentation. A Cease and Desist Order had been

issued by the Georgia Department of Banking and Finance against the Bank. Knight's knowledge of the Order is indicated by his acknowledge of receipt and by his notification to the Bank's Blanket Bond insurer.

In a recent interpretation of Ga. Code ¶56-2409, the Georgia Supreme Court stated that "materiality" is a question of law for the court to decide if the evidence excludes every reasonable inference except that a misrepresentation is material. United Family Life Insurance Co. v. Shirley, 242 Ga. 235, 236, 248 S.E. 2d 635 (1978). The courts of Georgia are not reluctant to decide that a misrepresentation is material as a matter of law after finding that no other reasonable inference is possible; see, e.g., New York Life Insurance Co. v. Schneider, 155 Ga. App. 768, 770-71, 272

S.E. 2d 739 (1980); Prudential Insurance Co. v. Perry, 121 Ga. App. 618, 626-27 (1970) and cases cited therein. See also Davis v. Integon Life Insurance Corp., 645 F. 2d 494, 498 (5th Cir. 1981) (holding that misrepresentations regarding insured's medical history are "fraudulent" within the meaning of Ga. Code §56-2409(1) as a matter of law.)

National Union has presented evidence from three separate sources that the existence of a Cease and Desist Order is material to an insurer's decision to issue a policy. First, two National Union employees have testified by affidavit that the existence of the Cease and Desist Order was important enough to have influenced National Union's decision to insure Toney Brothers Bank. The National Union underwriter principally responsible for the con-*sideration [609]

of the Bank's initial application has testified that the existence of the Cease and Desist Order "shows that Toney Brothers Bank constituted a significantly greater risk than was indicated by the January 7, 1977 application," and that National Union would not have issued the initial policy had it known about the Order. Affidavit of David Ratner dated April 27, 1981 at ¶7. National Union's Senior Vice President in charge of the Underwriting Department has testified that "there is a much greater risk or hazard in insuring financial institutions and the officers and directors of financial institutions who have a history of economic and regulatory problems." Affidavit of Christopher Cavallaro dated April 27, 1981 at ¶3. Cavallaro further testified that "it would be contrary to the underwriting standards applied by

National Union Fire Insurance Company of Pittsburgh, Pa. to issue a directors and officers liability policy such as the policies issued to Toney Brothers Bank to a financial institution having the problems indicated in the cease and desist order." Id. at ¶7. Second, Hartford Accident and Indemnity company cancelled the Bank's Blanket Bond upon receiving notification of the issuance of the Cease and Desist Order, and the Hartford official who made the decision to cancel has testified that he did so because the Order "highlights a bad situation in any bank." Deposition of William Driscoll at 11. Finally, the Director of Bank Supervision of the Georgia Department of Banking and Finance has testified that the issuance of a Cease and Desist Order by his Department is not a commonplace event and

is a matter of great seriousness. Deposition of John B. Kline at 43. Kline further testified that the issuance of a Cease and Desist Order is "the strongest and the ultimate device that a regulatory agency has in its supervision of a bank." Id. at 69 Plaintiffs have presented no evidence to controvert these statements. On the basis of the evidence of Ratner, Cavallaro, Driscoll and Kline, two of whom are disinterested witnesses, and the undisputed fact that Hartford Accident and Indemnity Company cancelled the Bank's Blanket Bond *upon notification of the issuance of the Cease and [610] Desist Order, the Court holds as a matter of law that the negative response to question 14 on the applications of August 3, 1976 and January 7, 1977 was a material misrepresentation within the meaning of Ga. Code §56-2409.

In response to National Union's section 56-2409 argument, Plaintiffs contend that the misrepresentation in January 7, 1977 application related only to the original policy and not to the renewal policy at issue here. They base this argument on their contention that when Knight submitted the renewal application he did not fill in the blank left for the date of the original application in paragraph 9 of the renewal application, and that an employee of Naional Union later added the date "January 7, 1977" in this blank. This contention is disputed by National Union; see National Union's Response to Plaintiff's Motion for Partial Summary Judgment filed June 1, 1981 at ¶5. For purposes of National Union's summary judgment motion, the Court must consider the evidence in the light most favorable to Plaintiffs, National Screen Service Corp.

v. Poster Exchange, Inc., 305 F. 2d 647, 651 (1962), and the Court will therefore accept Plaintiff's contention. Even so, Plaintiff's argument fails. By signing the September 26, 1977 renewal application, Knight agreed on behalf of the Bank that some application completed at some time would constitute part of the renewal appliand would form part of the renewal policy. The Bank had filed only two previous applications with National Union, on August 3, 1976 and January 7, 1977, and those applications contained identical material misrepresentions. Therefore, Knight knew when he filed the renewal application that National Union was relying on one or both of these previous applications, complete with material misrepresentations, in issuing the renewal policy. Plaintiffs cannot

benefit from Plaintiff Knight's purported failure or refusal to fill in the date requested in paragraph 9 of the renewal application; paragraph 9 binds Knight and the Bank even in the absence of this date. *Furthermore, the insurance broker [611] who obtained the renewal policy for the Bank has testified that when National Union issued the policy and sent it to the Bank, it had a copy of the renewal application attached to it, and the copy had the paragraph 9 blank filled in with the date January 7, 1977. Deposition of Alan S. Quaif at 30-31. Plaintiffs do not dispute this testimony. Plaintiffs' Response to Defendants' Supplemental Brief filed June 30, 1981, at 2. The application stated in paragraph 9 that it formed part of the policy, yet neither Knight nor Toney Brothers Bank ever objected to the alleged addition by National Union of the date January 7, 1977 to the blank in paragraph 9. Under Georgia law,

the insured has a duty to examine the insurance contract and to renegotiate any unacceptable terms, because the insured will be bound by the terms of the contract. Barnes v. Mangham, 153 Ga. App. 540, 540, 265 S.E. 2d 867 (1980); Georgia Mutual Insurance Co. v. Meadors, 138 Ga. App. 486 487, 226 S.E. 2d 318 (1976); Parris & Son, Inc. v. Campbell, 128 Ga. App. 165, 173-74, 196 S.E. 2d 334 (1973). The Court holds that the failure of Knight and Toney Brothers Bank to examine the renewal policy and to object to the alleged addition of the date January 7, 1977 to paragraph 9 of the attached renewal application provides a second, independant ground on which to find that the misrepresentation in the January 7, 1977 application was incorporated into the September 26, 1977 renewal applica-

tion and the renewal policy itself.

Plaintiffs further argue that National Union's failure to attach the January 7, 1977 application to the renewal policy prevented it from being incorporated into that policy. This argument fails for two reasons. First, the September 26, 1977 renewal application was attached to the renewal policy, and it incorporated by reference one or both of the earlier applications, each of which contained a material misrepresentation. Second, Georgia courts have often applied Ga. Code § 56-2409(2) to void insurance policies for material misrepresentations without reference to whether the appli-*cation was attached to the policy, [612] see, e.g., Phillips v. Old Republic Life Insurance Co., 155 Ga. App. 537, 539-40, 271 S.E.2d 676 (1980); Jefferson Standard Life Insurance Co. v. Bridges, 147 Ga. App. 5, 6, 248 S.E.2d 5 (1978), and

have specifically held with regard to fradulent representations that failure to attach the application to the policy does not bar the insurer's claim that the policy was void ab initio. Johnson v. American National Life Insurance Co., 134 Ga. 800, 802-03, 68 S.E. 731 (1910); National Life & Accident Insurance Co., v. Roberts, 60 Ga. App. 317, 322, 3 S.E.2d 761 (1939).

Even if Knight and Toney Brothers Bank made a material misrepresentation sufficient to render the renewal policy void ab initio, Plaintiffs argue that National Union is estopped from refusing to pay their claims because it undertook Knight's defense without reserving its right to dispute coverage, and later abandoned it in midstream. This contention is the basis for Plain-

tiffs' Motion for Partial Summary Judgment. Plaintiffs base this argument on a phone conversation between Kunes and Donald Browne, the Atlanta claims manager for National Union. Kunes argues that he informed Browne on Knight's behalf of the filing of a state court action against Knight, Toney Brothers Bank and another Bank officer by two stockholders of the Bank. Browne's response, according to Kunes, was to authorize Knight to employ Kunes to defend Knight in the action, and that National Union would pay 95% of the attorney's fees. Affidavit of G. Gerald Kunes dated May 13, 1981 at ¶7-10. National Union disputes this contention, pointing to Browne's deposition testimony that he recalls no such conversation and would not have made such an authorization. Deposition of Donald H. Browne at 30-31. Again, the Court will adopt

Plaintiffs' version for purposes of this Order. National Screen Service Corp. v. Poster Exchange, Inc., 305 F.2d 647, 651 (5th Cir. 1962). The parties agree that any such "authorization" was revoked by a letter from National Union's lawyer to Toney Brothers Bank dated November 2, 1978 declaring the policy void ab initio.

*Under Georgia law, a [613] statement by the insurer's employee or agent that a loss is covered does not estop the insurer from later denying coverage. St. Paul Fire & Marine Insurance Co. v. Purdy, 129 Ga. App. 356, 357, 199 S.E.2d 567 (1973); Parris & Son, Inc. v. Campbell, 128 Ga. App. 165, 168-69, 196 S.E. 2d 334 (1973) and cases cited therein. Estoppel arises only where an insurer with knowledge of a ground of non-coverage assumes the defense of an action against an insured without reserv-

ing its rights to later assert non-coverage against the insured. Jones v. Georgia Casualty & Surety Co., 89 Ga. App. 181, 1985, 78 S.E.2d 861 (1953). Even if the conversation between Kunes and Browne did occur, National Union asserts that it did not actually assume the defense merely by authorizing Knight to employ his own attorney. Furthermore, National Union argues that even if an estoppel arose, it cannot result in the provision of coverage that never existed.

Before estoppel results, Jones requires that the insurance company "assumes and conducts the defense of an action brought against the insured"; the insurance company in Jones assumed full control of the defense." 89 Ga. App. at 185 (emphasis added). The "assumes and conducts" language is generally specifically quoted or repeated in later cases

concerning this issue. E.g., Richmond v. Georgia Farm Bureau Mutual Insurance Co. 140 Ga. App. 215, 217, 231 S.E. 2d 245 (1976); Gant v. State Farm Mutual Automobile Insurance, Co., 109 Ga. App. 41, 43, 134 S.E.2d 886 (1964); State Farm Mutual Automobile Inusurance Co. v. Anderson, 104 Ga. App. 815, 818, 123 S.E. 2d 191 (1961). National Union argues that Browne's alleged authorization to Knight to employ Kunes, which was withdrawn two weeks later when National Union notified Toney Brothers Bank that it considered the policy void ab initio, does not constitute the "conducting" of Knight's defense in the state court lawsuit.

The renewal policy at issue here neither requires no permits National Union to assume and conduct the defense of Knight and Toney Brothers Bank. Instead, it proves in ¶6 entitled *"Costs, [614]

A-11 continued

Charges and Expenses and Defense," as follows:

> No costs, charges and expenses shall be incurred without [National Union's] consent which shall not be unreasonably withheld; however, in the event of such consent being given, [National Union] will pay... 95% of all such costs...

The policy contemplated that National Union's only involvement in the defense of Knight would be initially to approve Knight's selection of a lawyer to defend him and ultimately to pay 95% of the attorney's fees and related expenses. The manager of National Union's directors and officers liability claims division has testified on behalf of National Union that this is the standard procedure by which National Union handles a directors and officers liability claim. Deposition of National Union Fire Insurance Company by Stanley Morris at 95-96.

The Georgia Court of Appeals appears to interpret "assumes and conducts the defense" as "engag[ing] the services of counsel who have filed pleadings and are defending the damage action." Gant v. State Farm Mutual Automobile Insurance Co., 109 Ga. App. 41, 43, 434 S.E.2d 886 (1964); see also the language of Jones, quoted above. It is undisputed that Kunes actually represented Knight in the several actions filed against him, that it was Knight who retained Kunes, and that National Union never interfered or attempted to influence Kunes' defense of Knight during the two weeks that the alleged authorization was in effect. Nor do Plaintiffs argue that National Union's November 2, 1978 declaration that the policy was void ab initio in any way affected Kunes' handling of Knight's various defenses; the dispute between

Plaintiffs and National Union concerns who will pay for those defenses, not how they were conducted. The Court therefore finds that, even if Browne did authorize Kunes to represent Knight, National Union did not "assume and conduct" Knight's defenses in the manner required by the Georiga courts to create estoppel.

*Furthermore, even if the [615] Court held that the authorization was sufficient to create an estoppel, Plaintiffs have failed to prove that Kunes' defense of Knight was in any way affected by the authorization or its withdrawal two weeks later. For an estoppel to arise from an insurer's conduct of a defense, prejudice to the insured must be present. Home Indemnity Co. v. Godley, 122 Ga. App. 356, 361, 177 S.E.2d 105 (1970). On the basis of these two independant theories, the Court holds that

Browne's alleged authorization of Knight's employment of Kunes in one state court action could not estop National Union from declaring on November 2, 1978 that the renewal policy is void ab initio.

There is yet another reason why the estoppel argument cannot save plaintiffs. Under Georgia law, even if an estoppel were to arise, it could not be used to create coverage that never existed. In McGhee v. Independent Life & Accident Insurance Co., 146 Ga. App. 310, 246 S.E.2d 349 (1978), the court held that certain misrepresentations regarding the insured's medical history were material as a matter of law and made the policy voidable at the option of the insurance company under Ga. Code §56-2409. 146 Ga. App. at 311. The court then rejected the insured's argument that the insurance

company was estopped from denying coverage because of alleged statements by the insurance company's agent that coverage was in effect, holding, "The doctrine[s] of implied waiver and of estoppel, based upon the conduct or action of the insurer, or its agent, are not available to bring within the coverage of a policy risks not covered by its terms, or risks excluded therefrom." Id., quoting Ballinger v. C & S Bank, 139 Ga. App. 686, 689, 229 S.E. 2d 498, 501 (1976). See also Ballinger, supra, and cases cited therein; Keaton v. Paul Revere Life Insurance Co., 648 F.2d 299, 304 (5th Cir. 1981) and cases cited therein. Plaintiffs here seek to use the estoppel doctrine to create coverage where none ever existed because of the action of Ga. Code §56-2409; under McGhee, however, a Georgia court would reject this argument, and so must this Court.

*Plaintiffs raise several [616] other arguments in their voluminous filings concerning the cross motions for summary judgment. They argue, for example, that National Union could not have relied on the January 7, 1977 application in issuing the inititial policy, which was effective from December 1, 1976 to December 1, 1977. The answers to this are three-fold: there already existed on December 1, 1976 another application containing an identical misrepresentation; it appears from the face of the initial policy that it was not typed up until January 21, 1977; and, most importantly, it is National Union's reliance in issuing the renewal policy that is at issue here. Plaintiffs' further arguments include at least the following: National Union cannot rely on the misrepresentation concerning the

existence of a Cease and Desist Order because it was not specifically mentioned in the November 2, 1978 letter as one of the grounds for declaring the policy void ab initio; National Union is estopped from denying coverage because it had notice on June 30, 1978 of irregularities at Toney Brothers Bank but did not declare the policy void for four months; and the policy is still valid because the returned premium was not accepted by the Bank during the term of the renewal policy. The Court finds these arguments and all others raised by Plaintiff to be without merit.

On the basis of the foregoing analysis, the Court holds that National Union's policy number 651 71 27 was void ab initio under Ga. Code §56-2409 because of the material misrepresentations made by Knight on behalf of Toney Brothers

Bank in the applications of August 3, 1976 and January 7, 1977. The Court further holds that even if National Union authorized Knight to employ Kunes to represent him on October 18, 1978, before declaring the policies void on November 2, 1978, National Union is not estopped from denying coverage. Defendant National Union Fire Insurance Company's Motion for Summary Judgment is GRANTED. Plaintiffs' Motion for Partial Summary Judgment is DENIED. Plaintiffs' two Motions to Compel are DISMISSED as moot.

*As a result of this Order, [617] the only remaining Defendant is Toney Brothers Bank. However, the Plaintiffs have never served the Bank with a summons and complaint in this action. Therefore, Plaintiff's claims against said Defendant are hereby DISMISSED for want of prosecution Local Rule 131.11 Final judgment

shall be entered in favor of Defendant National Union Fire Insurance Company of Pittsburgh, Pa.

SO ORDERED, this 16th day of October, 1981.

/s/ Orinda D. Evans
ORINDA D. EVANS
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 81-7865
Non-Argument Calendar*

A. T. KNIGHT, G. GERALD KUNES
and KUNES & KUNES,
Plaintiffs-Appellants,

versus

NATIONAL UNION FIRE INSURANCE COMPANY OF
PITTSBURGH, PA and TONEY BROTHERS BANK,
Defendants-Appellees.

Appeal from the United States District
Court for the Northern District of Georgia

(August 20, 1982)

BEFORE TJOFLAT, FAY and HENDERSON, Circuit Judges.

PER CURIAM:

The summary judgment appealed is affirmed based upon the Order entered by the United States District Court on October 6, 1981.

AFFIRMED.

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 81-7865

A. T. KNIGHT, et al,
Plaintiffs-Appellants,

versus

NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA, et al,
Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Georgia

---

ON PETITION FOR REHEARING
( )

Before TJOFLAT, FAY and HENDERSON, Circuit Judges.

PER CURIAM:

IT IS ORDERED that the petition for rehearing filed in the above entitled and numbered cause be and the same is hereby denied.

ENTERED FOR THE COURT:

United States Circuit Judge

National Union Fire Insurance Company
of Pittsburgh, Pa.
102 Maiden Lane New York, N.Y. 10005
212/791-7000 -7856

A Member Company of
American International Group

August 17, 1978

Lonnie C. Blalock, Jr.
President
Toney Brothers Bank
P. O. Box 68
Doerun, Georgia 31744

Re: Claim No.: 01-6160-651-7127
Insured: Toney Brothers Bank
Directors & Officers Liability

Dear Mr. Blalock:

The National Union Fire Insurance Company of Pittsburgh, Pa. provides Directors and Officers Liability and Corporation Reimbursement insurance to Toney Brothers Bank and its present subsidiaries during the policy period December 1, 1977 to December 1, 1978. We received telephone reports of a possible claim. We retained Watson, Spence, Love and Chambless of Albany, Georgia to investigate further into the matter. You have had certain discussions with Mr. Chambless and we have been provided with a copy of your letter of June 23, 1978 together with the attached "Directors and Officers claim."

The claim set forth in your letter and further detailed in the attachment to the letter would be a claim against certain officers and directors of the Bank by the Bank. We can only draw your attention to Endorsement #9 of the policy which states:

> "In consideration of the premium charge, it is hereby agreed that the Insurer shall not be liable to make any payment for loss as defined in Item 2(c) under this policy in connection with any claim or claims made against the Insureds by an Insured as defined in this policy, including the company named in Item #1 of the Declarations, except for stockholders' derivative actions brought by a shareholder of the company other than an Insured."

The company named in Item #1 of the Declarations is Toney Brothers Bank and its present subsidiaries.

00557

EXHIBIT "B" A-19

It would appear that the claim you have advanced in your letter clearly falls within the exclusionary language of the endorsement quoted above. The policy afforded by National Union Fire Insurance Company of Pittsburgh, Pa. would not by its terms apply and we accordingly must reject the claim.

Very truly yours,

Stanley Morris
Secretary

SM/dc

cc: Alan S. Quaif
Overseas & Domestic Underwriters Ltd.
3384 Peachtree Road, N.E.
Atlanta, Georgia 30326

Thomas S. Chambless, Esq.
Watson, Spence, Lowe & Chambless
320 Residence Avenue at North Jefferson St.
Albany, Georgia 31702

Robert P. Costin
Brewster Costin, Inc.
325 North Main Street
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ROBERT GILROY
PETER J. THUMSER
ROBERT M. MALLA

KENNETH A. SAGAT
ROBERT D. DONNEY
ROBERT P. O'NEILL
HOWARD WILDMAN
DAVID J. RITCHIE
MARK B. ROTH
L. STEPHEN SAVITT
TED J. TAYENBRUN
ANDREW R. SIMMONDS
PAUL A. IMMERMAN
JONATHAN M. PLASSE
JAMES P. DOWD
ALFRED A. D'AGOSTINO, JR.
ROBERT W. LANG
JOHN P. HIGGINS

November 2, 1978

Att' Stanley Morris

RECEIVED
NOV 06 1978
S. MORRIS

TONEY BROTHERS BANK
P.O. Box 68
Doerun, Georgia 31744

Re: Policy No.: 6517127
Claim No.: 01-6160-6517127
Insured: Toney Brothers Bank
Directors and Officers Liability
Our Ref.: 12060-893

Dear Sirs:

We represent the National Union Fire Insurance Company of Pittsburgh, Pa. which provided Toney Brothers Bank and its present subsidiaries with Directors and Officers Liability and Corporation Reinbursement insurance during the policy period December 1, 1977 to December 1, 1978. The policy number is 3842161. The policy was a renewal of policy number 6517127.

It is the position of the National Union that the policies in question were procured on the basis of material misrepresentations in the application forms and in the financial statements submitted with the application forms. The application forms are those of January 7, 1977 and September 26, 1977, both signed by Mr. Knight. The January 7, 1977 form is incorporated in the application form of September 26, 1977 by virtue of Item 9 of the September 26 application. While the misrepresentations are not limited to the responses to questions 18, 19 and 20 of the January application, we refer you to the responses in question for specific instances of material misrepresentation. Among other things, it is the position of the National Union

11/6 A-21

that loans to directors individually or to the corporations or other firms in which any director had more than a 10% interest are not fully set forth in the application form. The responses to questions 19 and 20 speak for themselves.

Because of material misrepresentations in the procurement of the policy, the National Union hereby elects to rescind. It is the position of the National Union that the policy is void ab initio.

We enclose herewith American Home Assurance Company check number 78335 dated November 3, 1978 and drawn to the order of Toney Brothers Bank in the amount of $13,574.00. This check represents a return of premium together with interest.

Very truly yours,

Robert Gilroy

:cd

Enclosure

cc: Mr. Robert P. Costin
BREWER COSTIN, INC.
325 North Main Street
P.O. Box 928
Moultrie, Georgia 31768

cc: Mr. Alan Qualif
OVERSEAS & DOMESTIC
UNDERWRITERS, LTD.
3384 Peachtree Road, N.E.
Atlanta, Georgia 30326

A It has been in use.

Q Up at the top there, if you will, I think NU stands for National Union. Is that correct?

A Correct.

Q And, of course, insured's name is Toney Brothers Bank. You have a code 29.

What does that mean?

A That is a code for National Union; it is the company code. Each company has its own code.

Q What company code is that particular 29 in National Union?

A That is National Union Fire Insurance Company. Now American Home would have another code.

Q In other words, the code is not National Union's code, it is just a code for the company.

A It is a code that designates the company that issued the policy that is involved in this file.

Q The producer's code, who does that refer to?

A I am not an expert on codes. There is all kinds of coding in here which is necessary for the appropriate records, but which are not meaningful to me.

Q It says date of accident, 5/8/78.

What is supposed to have happened on May 8, 1978?

A That is the date we received notice of this

matter.

Q By what vehicle did you receive the notice?

A I must refer to my file.

There was a telephone call from a Mr. Quaif on May 8, 1978.

Q What document number is that you are reading from, sir?

A This is 00354.

MR. TODD: It is at the very bottom of the stack.

Q That message was a telephone message that you received or that one of your girls received?

A One of my girls received this message.

Q Does Ga mean Georgia holding?

A It means Georgia. I don't understand the holding part of that. Maybe he was holding -- no, it couldn't be. I don't know what that holding means.

Q At that time had any formal claim form been sent to you?

A No -- well, let me rephrase that. None had been received by me.

Q Did you subsequently receive one in writing?

A We did receive correspondence, yes.

Q What document number is that?

A Document number 00351 from Mr. Quaif. It is a

letter that I received on May 12, 1978.

Q That was accompanied by a letter from Mr. Robert B. Costin.

A That's correct.

Q Mr. Costin attached a letter from Mr. Lonnie Blalock.

A That's correct.

Q Sir, did you subsequently receive in response to Mr. Blalock's letter of April 28, 1978 any written claim form from Toney Brothers Bank?

A No.

Q Did you at any time ever find out what loans Mr. Blalock was referring to that Mr. Knight and Mr. Jackson made?

A Yes.

Q Was that on one of your claim forms from Toney Brothers Bank?

A No.

Q When did you discover what these loans were?

A We had retained counsel, Tom Chambless, to contact Mr. Blalock to get further details.

Q Did Mr. Chambless advise youwhich loans they were talking about?

A He sent us a report dealing with a number of

loans, yes.

Q Is that included in here?

A Yes, sir.

Q What number is that, please, sir?

A That would start with 00311 and run through 00335. That was sent to us with Mr. Chambless' letter of June 30, which is 00309 and 00310.

Q So that Mr. Chambless actually provided the notice of the claim to National Union after you hired him; is that correct?

A Yes. We had hired him to investigate.

Q You hired him in May of '78; is that correct?

A Yes.

Q What was the date of that letter to you concerning those loans?

A June 30, 1978.

Q Is this the first time you had used Mr. Chambless?

A I don't know.

Q I am talking about you for officers and directors claims.

A Yes, the first time in connection with an officers and directors claim.

Q Going back to your abstract sheet over there, sir, I see a description of risk. It says, limit $1 million.

O.K.

A Correct.

Q What facts do you see in that paragraph that prove that Tom was a silent partner in a business that the bank had made a loan to?

A Mr. Blalock says, "I already knew that Tom was a silent partner in the corporation. He had a good package deal going," et cetera.

Q Does Mr. Chambless anywhere in these 24 pages of legal size typewritten material in any way document that conclusion of Mr. Blalock?

A There is no documentation attached, no.

Q Does this report show who the other principals were in the Mini-Marts?

A There is reference to Art Thompson, I believe.

Q Did Mr. Chambless or anyone on your behalf make an inquiry of Mr. Art Thompson as to whether or not this was true?

A I have no information that they did.

Q Isn't it true that Mr. Chambless asked Mr. Blalock where Mr. Thompson could be located and it is contained in this 24 pages of legal typing?

A It may be.

Q Isn't it right up there on the top of page 2,

as directors and officers claim, in which he lists a number of items totaling some $207,000 which he seems to feel represents losses sustained by the bank due to the activities of Messrs. Knight and Jackson.

I was concerned about the adequacy of the investigation, I was concerned about the question of whether or not we did have in fact a valid policy in effect.

My file contains a memorandum that I wrote to Mr. Gilroy on July 11. I had received the report from Mr. Chambless on July 7, 1978. I need to retreat again.

I had written to Bob Gilroy on July 7, 1978 stating that I had just been through Mr. Chambless' report and that I expected to have Mr. Gilroy's comments and I stated, "It seems to me we need much more detail, but I am not sure we can get it very quickly. I am interested in our original inception date of December 1, '76 as it relates to whatever went on."

I think you should understand that at that point we were concerned with respect to the procurement of our policy and we come to my memo of July 11, 1978 and I obviously had decided that Mr. Gilroy needed the underwriting file for review and I obviously had procured it again and I provided him with copies of both policies and pointed out that the application had been executed by Mr. Knight.

I have a notation in my file dated July 24, '78 --

Q What number of these documents?

A This last one is 00568. It is one of my rare notes to the file, I am afraid.

Q Go ahead. You don't need to wait on me.

A I think that note reflects my concern that we were not developing all of the information that was desirable and does reflect that at that time we were concerned as to whether or not our policy had been properly procured.

Q That was as of what date, sir?

A That is as of July 24, 1978.

Q On July 24, 1978 you were concerned about whether or not there were material misrepresentations in the application.

A Precisely, and prior.

Q Subsequent to July 24, 1978, what documentation do you have of any investigation you made or had made on behalf of National Union to substantiate any of the charges that Mr. Blalock has brought concerning Mr. Knight or Mr. Jackson?

A I have no such documentation.

Q Has any such inquiry in fact been made, to your knowledge?

A I do not know.

Q By that do you mean --

A I don't know what was attempted. I have no reports of any results.

Q In other words, so far as your knowledge is concerned, there was none. I am not --

A I have no results. I don't know what attempts may have been made.

MR. LAMB: Are you including discovery in this action?

MR. KUNES: No.

Q I am talking about from July 24 up until the date you rescinded the policy.

A I believe what I am trying to say is that I was concerned about getting the information. I thought that the proper action by me in order to obtain it was in place.

I have got Gilroy working on it, I have got Chambless working on it. They know what our problem is.

Q They knew on July 24, 1978 what your problem was.

My question very simply is, then, between July 24, 1978 and November 2, 1978, did Mr. Gilroy give you any additional factual information to back up Mr. Blalock's claims.

A No.

Q Did Mr. Chambless give you any information to

back up Mr. Blalock's claims?

A No.

Q So that on November 2, 1978 when the policy was rescinded it was rescinded upon information that you had in the file which we have already gone over from Mr. Chambless and from Mr. Blalock's report to National Union.

A Yes.

Q Now, then, I believe you said you have been a claims man for 30 years.

A Longer than I can remember. I guess it is 30 years. It might be 35.

Q Have you in the past used investigative adjusters to develop information that you needed to substantiate a conclusion which someone else has said to you as a fact?

A Yes.

Q Did you, between the time of July 24, 1978 and November 2, 1978, have people available who could also have substantiated or proven such was or was not the fact?

A I don't believe that I felt that I could get anybody better qualified to do so than Mr. Chambless.

Q I didn't mean that.

My question is, you did have someone who could have found these facts out for you and reported the truth or untruth of the claims. Could you not?

I believe the cease-and-desist order is question number 14 on the application, is that correct, or do you need to refer to it?

A I need to look. Yes, that's number 14.

Q That question was answered no.

A That's correct.

Q From Mr. Blalock's conversation with Mr. Chambless on June 30, 1978 by letter he advised National Union that there was a cease-and-desist order outstanding; did he not?

A That's correct.

Q Refer to Mr. Gilroy's letter and, if you will, give us the number that you have on the bottom of Mr. Gilroy's letter.

A 00508 and 509.

Q I believe Mr. Gilroy refers to the January 7, 1977 application signed by Mr. Knight; does he not?

A He does.

Q Is that the January 7, 1977 application that you have on your policy in front of you?

A That's correct.

Q What numbers are they, sir?

A 280, 281 and 282.

Q Again referring to Mr. Gilroy's letter, I believe Mr. Gilroy is incorporating the January 7, '77

answers by virtue of item number 9 of the September 26, 1977 application and he says, "While the misrepresentations are not limited to the responses to questions 18, 19 and 20 of the January application, we refer you to the responses in question for specific instances of material misrepresentation."

Those are specific instances of material misrepresentation. On that date you also knew about the cease-and-desist order; did you not?

A We knew there was a cease-and-desist order in effect, yes.

Q Further quoting from Mr. Gilroy's letter, "Among other things, it is the position of the National Union that loans to directors individually or to the corporations or other firms in which any director had more than 10 percent interest are not fully set forth in the application form. The responses to questions 19 and 20 speak for themselves."

What are questions 19 and 20 on that application of January 7, 19777

A Question 19 asks, "Has there been or is there now pending any claim against any person proposed for insurance in their capacity of either director or officer of the above financial institution?"

Q Did you in your information from Mr. Chambless

or in any information Mr. Gilroy may have given you learn of any claim against any such person which made the answer to that question incorrect?

A At this point I know of none.

Q What is question number 20, please, sir?

A Number 20 asks, "Does any director or officer have knowledge or information of any act, error, or omission which might give rise to a claim under the proposed policy?"

Q How is that answered?

A "No."

Q I believe you stated you are familiar with that first policy.

Doesn't it exclude coverage prior to December 1, 1976?

A No.

Q The first policy does not exclude losses occurring prior to the inception date?

A The first policy does not exclude loss arising from acts preceding December 1, 1976, if that is your question, sir.

Q Wouldn't it by policy terms exclude any coverage or acts which were done prior to the existence of the insurance?

A No.

Q You mean that that insurance policy would insure for errors and omissions which occurred prior to December 1, 1976.

A It could.

Q Under what circumstances?

A Assuming that the person did not have any knowledge of it. This policy is a claims made policy. It covers acts going back to the creation of the world except that we do not buy things that people knew about. You can't insure a fire that has already happened.

Q Explain for me the difference between a claims made policy and an ordinary policy.

A By its terms it is applicable to terms made while the policy is in effect unless otherwise excluded.

Q What about claims arising after December 1, 1977?

A There would be no coverage.

Q So that the first policy covered from the beginning of time until December 1, 1977.

A That's correct.

Q After 1977 it provided no coverage.

A That's correct.

Q Unless a claim were made within the policy year.

A That's correct.

Q Is that also true of the second policy?

A That's correct.

Q Now, with regard to Mr. Gilroy's letter, he also relates to responses to question number 18 on the January 7 policy.

If you would, read that to us and tell us what his answer was to that.

A Question number 18; is that correct?

Q Yes, sir.

A That is in two parts. A. "Are there any outstanding loans to directors individually or to corporations or other firms in which any director has more than a 10 percent interest?" The answer is yes. "If yes, describe fully the nature, amount and current status on a separate sheet."

I do not see the separate sheet.

Q Is that the reason that that question was included, because you don't have the second sheet?

A I'm sorry?

Q Is that the ground upon which Mr. Gilroy is referring to question 18, that there is no second sheet attached?

A I doubt that. I presume that there was a sheet attached and it isn't here.

Q You are not saying that you weren't given the second sheet.

A No, I am not saying that at all. I don't know whether there is one.

Q Of course, I am sure Mr. Gilroy can answer this a little more fully.

A I am sure he can, and when you get into the underwriting file you will find specifically whether it exists.

Q I am sure it exists. My only reason for asking about this right now is that I am trying to determine, since you don't have a copy of it attached to your file, if that was the reason you were claiming that there was a misrepresentation in not giving you that information.

A No, I don't believe that is the basis for it.

Q Nowhere in Mr. Gilroy's letter does he refer to the alleged misrepresentation in answer to question 14.

A I don't think at that point -- strike out the word "think" -- at that point we were not aware that there had been a cease-and-desist order in existence prior to the completion of this application.

Q Didn't you just say a moment ago that this first policy was going to cover all omissions from the beginning of time up to the end of the policy period?

A Unless otherwise excluded.

Q I will ask you to refer to page 4 of Mr.

Chambless' letter to you, which is 00314, and ask you if on that page he does not advise the bank that they are operating under a cease-and-desist order.

A The entire sentence is, "We had just had an audit by the state and we were operating under a cease-and-desist order from both the FDIC and the state."

It indicates that at least at this point in time there is in existence a cease-and-desist order.

Q From both the FDIC and the state.

A Apparently so.

Q Referring you to your copy number 307, which is a hand memo to Bob Gilroy dated 7/7/78, the first, "We need to consider" -- I can't read that writing there.

A "We need to consider the reserve."

Q That is the one we are talking about where it was first to $35,000 and then raised to $100,000 and then to $200,000.

A Yes. It went to $100,000

Q Then it went to $200,000.

A Yes, at the end of the year.

Q Then the second says, "We need to consider underwriting action."

Does that mean that you have a policy against underwriting errors?

A No. I think that this is saying we have got a problem, it may be void ab initio, it may need to be cancelled because of the problems they have got, we need to do something.

Q So far as you know, other than writing the letter of July 7 and the handwritten memo of July 24, '78 to Mr. Gilroy, nothing else was done until November 2 when the policy was cancelled, rescinded.

A I know of no information that was received.

Q I can't help but admire your next phrase in that letter. It looks like, "We are insuring some black hats now."

A Yes.

Q What is the connotation that we can have an explanation for from those words?

A Well, in a cowboy movie the good guys wear white hats and the bad guys wear black hats and the connotation was that we had some bad guys.

Q Again in your 30 years of experience you have run across black hats before; have you not?

A Yes.

Q In your insurance claims?

A Yes.

Q And you have paid on behalf of the black hats because the white hats very seldom have claims; is that

MR. LAMB: I will object to that question and instruct him not to answer it.

You are asking him about legal positions taken presumably under Georgia law with which this witness is not familiar. He is not a lawyer and you are asking him to conclude whether knowledge that Mr. Knight may or may not have had affects the legal validity of the policy based upon failure to disclose that knowledge.

This witness is not competent to render legal opinions. I will object to the form and instruct him not to answer.

MR. KUNES: Let me rephrase it.

Q Did you make the decision to rescind this policy as being void ab initio?

A Yes.

Q Did you make up that ground that we have just discussed, huge overdrafts, as one of the grounds on which the policy was rescinded as being void ab initio?

A I believe that this is properly characterized, this list, as representing the pieces of the whole pie that indicates that there were improper activities going on.

Q Then let me go back and clarify that because that wasn't what I was trying to arrive at. I was trying to get each and every ground that you were contending you had a

Q Have you ever had a previous occasion where National Union was sued jointly with an officer or director which it had insured?

A I don't know whether we have had a previous occasion. We have had a subsequent occasion.

Q Let me ask you this: When you are made a party defendant to a lawsuit with an officer and director, what is your procedure with regard to handling the claim?

A Well, we would retain counsel to represent the insurance company.

Q That was Mr. Chambless in this case; is that correct?

A Yes.

Q With regard to the officer or director who is sued, what do you do for him?

A You know, it just does not normally occur this way. If I may simply describe the manner in which a D & O case is normally approached, perhaps it will fit the picture.

Normally, of course, we are notified of litigation which will include directors or officers of a corporation as defendants and unless we have reason to believe that the people involved understand the operation of the policy we do contact them as promptly as possible to make certain that they do understand that the policy does not include a defense

obligation, that their obligation under the policy is to provide us with notice and secure our consent before incurring expense and we tell people what that really means is decide who your lawyer is going to be and let us know who it is. If we have any objection to your retention of that attorney, if we think you have made a mistake, we will let you know.

Then we proceed with the further handling of the matter. The most important thing in that point is to make certain that proper representation is obtained and that a proper appearance is made.

Q So that you or National Union does not hire the defense lawyer for the director who is the defendant --

A That is really the point of everything I just said.

Q And he hires his lawyer and National Union subsequently pays him, pays the lawyer according to the terms of the policy.

A According to the terms of the policy, yes.

Q You are really talking about two different lawyers because you got the National Union lawyer, who is Mr. Chambless, and then you have the officers and directors lawyer, who is "supposedly me," as being two different lawyers who both are "supposedly to get paid by National Union."

A Possibly you.

HENRY JACOBS ASSOCIATES, INC.

Q I am going to again refer to number 246 --

A Those are the yellow sheets that were on the top?

Q Yes.

A Yes.

Q I am referring to 246, which I think is page 1.

A Yes, sir.

Q On 10/19/78 Don Brown called you and told you that I had contacted him as Knight's attorney and was going to handle Knight's case; did he not?

A Yes.

Q At that time did you tell Mr. Brown to tell Mr. Knight that I was unsatisfactory?

A No.

Q Did you tell Mr. Brown to tell me that I was unsatisfactory?

A No.

Q Did you at that time think I was unsatisfactory?

A No.

Q Then I believe you also, on that same day, called Mr. Chambless and told Mr. Chambless that Mr. Chambless would be hearing from me.

A My recollection is that I didn't reach Mr. Chambless, but that I left a message with the female who answered the phone.

HENRY JACOBS ASSOCIATES, INC.

Q And told her to tell Mr. Chambless that Mr. Chambless would be hearing from me.

A That's correct.

Q You put it down on your paper as, "Hear from Knight's attorney."

A Yes.

Q That was on 10/19/78, the day after I called Mr. Brown.

A Yes.

Q On 10/26/78 Mr. Chambless wrote Mr. Lang.

Who is Mr. Lang?

A Mr. Lang is an associate in the firm of D'Amato & Lynch.

Q He is in with Mr. Gilroy.

A That's right. He works closely with him.

Q They are the National Union lawyers here in New York.

A Yes.

Q Mr. Chambless told Mr. Lang that I was representing Knight and I had called to let him know, him being Mr. Chambless, that you would be hearing from Knight's attorney; is that correct?

A I had called Mr. Chambless to let Mr. Chambless know that he would be hearing from you, yes, and Mr. Chambless'

letter I believe confirms that.

Yes, Mr. Chambless' letter of October 26, 1978, which is marked 00518, although he does say the same thing -- no. It is 518 to Lang. In his second paragraph he says, "I received a telephone message several days ago from Mr. Stanley Morris indicating that an attorney for Mr. Knight would be contacting me, but to date I have heard nothing."

Q So that prior to November 2, 1978 when this policy was rescinded void ab initio you knew that I had been hired to represent Mr. Knight in this litigation.

A Yes.

Q And that your Atlanta office had relayed that information to you.

A Yes.

Q That person was Don Brown.

A Yes.

Q And you relayed the information on to Mr. Chambless who is a lawyer in Albany, Georgia.

A That's correct.

Q And he later wrote back to you that I was representing Mr. Knight in the letter of 10/26/78; is that correct?

A Yes, sir.

Q You have already stated, I believe, that Mr. Chambless sent back my bill in previous testimony.

Q Have you ever been in underwriting, Mr. Morris?

A No, I have not.

MR. KUNES: Let's take a break for a while.

(A short recess was taken.)

Q Mr. Morris, I am sure you can understand a country boy from Tifton, Georgia is not too bright. I don't mean to belabor this point, but I still don't understand how we go about hiring a lawyer for your director insured.

How should I have been hired?

A I think you were hired properly by Mr. Knight.

Q And had the insurance been effective, then National Union would have recognized --

A Well, our contract would not be with you I don't believe; it would be with either the bank or Mr. Knight depending upon whether or not the bank had indemnified Mr. Knight and it would be either Mr. Knight or the bank that would make claim against the policy for the attorney's fees.

Q Then the attorney's fees would be paid to the policy holder or the director.

A I think that's optional however you work it out at the time the funds are being transferred. You normally are dealing with more solvent organizations than Toney Brothers, you normally are dealing with corporations who have paid their lawyers and paid the lawyers who are representing

NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA.

A CAPITAL STOCK COMPANY

102 MAIDEN LANE, NEW YORK, N. Y. 10006

DIRECTORS AND OFFICERS LEGAL LIABILITY RENEWAL APPLICATION

Rival
Policy # 3842161
Dec 1, 1977-78

1. (a) Corporation Name— Toney Brothers Bank
   (b) State of Incorporation— Ga.
   (c) State of Principal operation— Ga.

2. Address: PO Box 68
   Doerun, Ga. 31744

3. Amount of Insurance presently carried $ 1,000,000 Retention $ 5,000

   (a) Amount of Insurance desired on renewal. Self Insured Retention $ _____
   Same

4. Attach copies of latest Annual Report.

5. If there has been a change, copy (Certified by Corporate Secretary) of the indemnification provision in the By Laws.

6. Complete list of all subsidiary corporations and percentage owned:

   NONE

7. Complete list of all Directors of parent company by name and affiliation with other Corporations.

   See schedule 1

8. Complete list of all Officers of parent company by name and affiliation with other Corporations:

   See schedule 2

9. It is agreed that this renewal application is a supplement to the application completed on 1/7/77 and that application together with this renewal supplement constitute the complete application that shall be the basis of the contract and will be attached to and form part of the policy.

10. It is agreed that the Corporation will file with National Union Fire Insurance Company of Pittsburgh, Pa., as soon as the same became available, a copy of each registration statement and annual or interim report which the Corporation may from time to time file with the Securities and Exchange Commission.

Form 8853

A-46

THE UNDERSIGNED AUTHORIZED OFFICER OF THE CORPORATION DECLARES THAT TO THE BEST OF HIS KNOWLEDGE THE STATEMENTS SET FORTH ARE TRUE.

SIGNING OF THIS APPLICATION DOES NOT BIND THE UNDERSIGNED TO COMPLETE THE INSURANCE, BUT IT IS AGREED THAT THIS FORM SHALL BE THE BASIS OF THE CONTRACT SHOULD A POLICY BE ISSUED, AND IT WILL BE ATTACHED TO THE POLICY.

TONEY BROTHERS BANK
Doerun, Georgia

Signed By: _____ PRESIDENT

Attest _____ Title PRESIDENT

_____ CASHIER Corporation Toney Brothers Bank

Broker BREWER-COSPER Inc
P.O Box 928

Date 9-21-77
(Corporate Seal)

Address Moultrie, GA 31768

MUST BE SIGNED BY PRESIDENT OR CHAIRMAN OF THE BOARD

IF AN ORDER IS RECEIVED THE APPLICATION IS ATTACHED TO THE POLICY, SO IT IS NECESSARY THAT ALL QUESTIONS BE ANSWERED IN DETAIL.

Form 311

MUNICIPAL BOND QUESTIONNAIRE

1. The total investments in municipal bonds found in banks investment portfolio.

$243,849.76.

2. Total dollar amount of any municipal bonds purchased in the past six months.

None.

3. Any New York City or New York State bonds purchased in the past six months. None.

4. Total dollar amount of New York City or New York State bonds purchased at any time in investment portfolio.

None.

IF YOU ANSWER "YES" TO QUESTION #3 or #4, WE ALSO MUST KNOW THE PURCHASE DATE, MATURITY DATE AND FACE VALUE OF BONDS.

None

5. Are there any bond holdings or securities in the banks' portfolio that are currently in default? If so, please advise details and date they went into default.

None

Toney Brothers Bank

Sept. 26. 1977

Schedule 1

F. Donal Brown-	President, Brown Milling Co.
A.T. Knight	Toney Brothers Bank
Fred Park	Owner- Fred Park Department Store
Rance J. Taylor	Farmer
Wm. L. Taylor	Toney Bros. Enterprises
Charles Everett	Farmer
A. H. Fussell	Livestock grower

Schedule 2

F. Donald Brown-	Chairman of the Board
A.T. Knight	President and Chief Executive Officer
Marguerite S. Pitts	Vice Pres. and Sect.
Maury Jackson	Cashier and Auditor
Evelyn Perry	Asst. Cashier

that a copy, which is correctly shown as I-65-Q-3?

A Yes, it is.

Q All right, sir. All right, sir. Now, then I ask you to look at that--let me ask--let me hand you something here before we go any further. I want to hand to you, Mr. Quaif, a document which has been identified as 10190-Q-3-A, and I'll ask you, if right below your letter of October 10th, if you don't have a copy of that?

A Yes, sir. There appears to be a copy there.

Q Is 10190-Q-3-A and Q-3-B, and Q-3-C, and Q-3-D the four pages that you have--are they exact copies of the four pages you have in your file, that you received from Tony Brothers Bank, regarding the renewal application?

A Yes, sir.

Q All right, sir. Do you have one of these?

A No, sir.

Q All right, sir. If you will, put those with your papers over there. Now, with regard to--going back to your file copy, sir, Mr. Quaif. In regard to the answer of question nine (9), is there any answer to that question on that renewal application, which you have identified as Q-3-A?

A No, sir.

Q Now, I wish you would look at your policy file, in your renewal file, please, sir, and if you would see if you can find a copy of that same page in your policy. All

right, sir. Now, there's a renewal application in your policy, which is attached to the policy in your file, is it the same as the one that's shown in your--in your correspondence copy; and which is shown as Q-3-A?

A Apparently the same, except for the date shown in item nine (9).

Q And, what is the date shown in item nine (9)?

A 1777 (sic).

Q Is that, 1/7/77?

A Correct.

Q Did you insert that in there?

A No, sir.

Q Did anyone in your office, under your supervision, insert that in there?

A No, sir.

Q Do you know who did insert that in there?

A No, sir.

Q Sir, did you send the application to National Union in its form as it is shown in your file, or as it's in the policy?

A I have to assume, as it's in the file, because that's the one to which my letter was attached.

Q All right, sir. And, the one to which your letter is attached, is identical to Q-3-A?

A Yes, sir.

Q And, on that Q-3-A, the answer to number nine (9) is blank?

A Correct, sir.

Q And, on the policy the answer to number nine (9) is--has been added, 1/7/77?

A Correct.

Q Okay. Did National Union Fire Insurance Company ever send that application back to you for sending back to Moultrie, or to Doerun, Georgia?

A I don't know, sir, without checking, but I have no recollection of it. I have no record of any such transaction, no, sir.

Q All right, sir. Thank you. Now, if you would, Mr. Quaif, would you look at I-73-Q-1. Is that the handwriting of anyone in your office?

A No, sir.

Q All right, sir. Would you look at Q-5, please, sir. Is that the handwriting of anyone in your office?

A No, sir.

Q All right. Q-6, was that sent to you, or do you have any knowledge of that?

A No, sir. I've never seen it before.

Q All right, sir. Q-7, have you ever seen Q-7, and 8 before?

A Well, it's addressed to me so I assume--yes, I

NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA.

A CAPITAL STOCK COMPANY

102 MAIDEN LANE, NEW YORK, N. Y. 10005

DIRECTORS AND OFFICERS LEGAL LIABILITY RENEWAL APPLICATION

Renal
Policy # 3842161
Dec 1, 1977-78

1. (a) Corporation Name— Tenco Brothers Bank
   (b) State of Incorporation— Ga.
   (c) State of Principal operation— Ga.

2. Address: PO Box 68
   Decatur, Ga. 31744

3. Amount of Insurance presently carried $ 1,000,000 Retention $ 5,000

   (a) Amount of Insurance desired on renewal: Same Self Insured Retention $_____

4. Annual copies of latest Annual Report

5. If there has been a change, copy (Certified by Corporate Secretary) of the indemnification provision in the By-Laws

6. Complete list of all subsidiary corporations and percentage owned.

   None

7. Complete list of all Directors of parent company by name and affiliation with other Corporations

   See schedule 1

8. Complete list of all Officers of parent company by name and affiliation with other Corporations

   See schedule 2

9. It is agreed that this renewal application is a supplement to the application completed on _____ and that application together with this renewal supplement constitute the complete application that shall be the basis of the contract and will be attached to and form part of the policy.

10. It is agreed that the Corporation will file with National Union Fire Insurance Company of Pittsburgh, Pa., as soon as the same became available, a copy of each registration statement and annual or interim report which the Corporation may from time to time file with the Securities and Exchange Commission.

Form 8953

20190-G-3.0

A-53

THE UNDERSIGNED AUTHORIZED OFFICER OF THE CORPORATION DECLARES THAT TO THE BEST OF HIS KNOWLEDGE THE STATEMENTS SET FORTH ARE TRUE.

SIGNING OF THIS APPLICATION DOES NOT BIND THE UNDERSIGNED TO COMPLETE THE INSURANCE BUT IT IS AGREED THAT THIS FORM SHALL BE THE BASIS OF THE CONTRACT SHOULD A POLICY BE ISSUED AND IT WILL BE ATTACHED TO THE POLICY.

TONEY BROTHERS BANK
Byron, Georgia

Signed By: _____ PRESIDENT

Attest _____ Title PRESIDENT

_____ CASHIER

Corporation Toney Brothers Bank

Broker _____

Date 9-22-77

(Corporate Seal)

Address _____

IF AN ORDER IS RECEIVED THE APPLICATION IS ATTACHED TO THE POLICY SO IT IS NECESSARY THAT ALL QUESTIONS BE ANSWERED IN DETAIL.

Form 391

20191-G-3-B

A-54

Toney Brothers Bank

Sept. 26, 1977

Schedule 1

F. Donal Brown-	President, Brown Milling Co.
A.T. Knight	Toney Brothers Bank
Fred Park	Owner- Fred Park Department Store
Rance J. Taylor	Farmer
Wm. L. Taylor	Toney Bros. Enterprises
Charles Everett	Farmer
A. H. Fussell	Livestock grower

Schedule 2

F. Donald Brown-	Chairman of the Board
A.T. Knight	President and Chief Executive Officer
Marguerite S. Pitts	Vice Pres. and Sect.
Henry Jackson	Cashier and Auditor
Evelyn Perry	Asst. Cashier

20192-Q-3-C

MUNICIPAL BOND QUESTIONNAIRE

1. The total investments in municipal bonds found in banks investment portfolio.

$245,839.75.

2. Total dollar amount of any municipal bonds purchased in the past six months.

None.

3. Any New York City or New York State bonds purchased in the past six months. None.

4. Total dollar amount of New York City or New York State bonds purchased at any time in investment portfolio.

None.

IF YOU ANSWER "YES" TO QUESTION #3 or #4, WE ALSO MUST KNOW THE PURCHASE DATE, MATURITY DATE AND PAR VALUE OF BONDS.

None

5. Are there any bond holdings or securities in the banks' portfolio that are currently in default? If so, please advise details and date they went into default.

None

SPECIAL RISKS
SURPLUS LINES

OVERSEAS & DOMESTIC UNDERWRITERS, LTD.

October 10, 1977

Mr. Charles N. Carmichael
Financial Services Manager
National Union Fire Ins. Co.
1819 Peachtree Road, N.E.
Atlanta, Georgia 30309

Re: Toney Brothers Bank
Renewal of Policy 384 21 61

Dear Charlie:

In response to your letter of September 1st, I am now enclosing a completed application and relevant financial information as requested.

In quoting the renewal please offer a supplementary quotation for ransom and kidnap insurance on the individuals shown in Schedule 2 attached to the application.

Sincerely,

Alan S. Quale

ASQ:dtk

Enclosure

I-65

A-57

DIRECTORS AND OFFICERS LIABILITY DEPARTMENT

Date 10/12/77

To: Ms. Lydia Kerr
Financial Services Department
A.I.G., New York

From: C. Carmichael

Re: Toney Bedding Group #334-21-61

PLEASE REVIEW THE ATTACHED DATA AND ADVISE US REGARDING A QUOTE.
WE NEED THIS BY 11/1/77 Expires 12/1/77

INFORMATION IS ATTACHED, AS FOLLOWS:

BANK OR FINANCIAL INSTITUTION	CORPORATE
✓ Application	_____ Application
✓ Latest Annual Report (to include Analysis of Reserve for Bad Debts)	_____ Latest Annual Report
✓ Latest Interim Balance Sheet	_____ Interims
_____ Latest Interim Income Sheet	_____ 10-K
_____ Latest Interim Analysis of Reserve for Bad Debts	_____ D & B
✓ Municipal Bond Information	_____ By-Laws
_____ Loans to REITS	
_____ Loans to D & O's	
_____ By Laws (Indemnification)	
_____ 10-K (if applicable)	
_____ Details on subsidiaries (where applicable)	

ADDITIONAL COMMENTS/RECOMMENDATIONS Current coverage from 3/31/77
Persons Bank did not have a Pension Plan. I
have asked for 6/30 audits & 9/30 income
statements which shall be mailed to you later.

BROKER Corporate Domestic Underw., Inc.
3376 Peachtree Rd, NE Atlanta
BROKERS ADDRESS Atlanta, Ga. 30326 Financial Services

I-73-Q

American International Companies

DATE 10/12/77

TO Mr. Alan S. Quaif
FROM Chas. Carmichael

AT Overseas & Domestic (Department, Branch or Company)
AT AIG-Atlanta (Department, Branch or Company)

SUBJECT Toney Bros. Bank # 384-21-61

MESSAGE

Dear Alan,

Thank you for your letter and renewal data of October 10, 1977. I am enclosing several applications for your use so that we may consider the other coverages mentioned in your letter.

In addition, we need to see the 6/30 and 9/30/77 income statement of the Bank - this for the D&O renewal consideration.

Yours truly,
Charlie

REPLY IN THIS SECTION — DO IT NOW

TO _____ DATE _____

SIGNATURE _____

DO NOT SNAP AWAY CARBON
DETACH CANARY - FORWARD WHITE AND PINK
Form 9044 (10/75)

WHEN REPLYING DETACH CARBON - RETURN WHITE COPY
RETAIN PINK COPY FOR RECORD

I-72-

DETACH THIS COPY

A-59

TWX 11/2/1977

TO CARMICHAEL

FRM KAX

TONEY BROTHERS BANK-R/N D AND O 384 -21-61

-EXP 12/1/77 QUOTE SUBJECT TO

(1) SCHEDULE OF LOANSTO D ANS O'S

1,000,000 5,000/20,000/20,000 SIR PREM DLRS 6,500

-1YR

STANDARD 7 ENDORSEMENTS

PENDING AND PRIOR (12/1/76

C.C AND D (95-0/0)

ONE INSURED VS. ANOTHER

90 DAY DISCOVERY

I-75-Q

A-60

American International Companies
ATLANTA BRANCH OFFICE
1819 Peachtree Road, N.E.
Atlanta, Georgia 30309
404/351-9550

November 2, 1977

DIRECTORS AND OFFICERS LIABILITY

Mr. Alan S. Quaif
Overseas & Domestic Underwriters
3376 Peachtree Rd., N.E.
Atlanta, Ga. 30326

RE: TONEY PRO[illegible]
Renewal o[illegible], 61
Expire[illegible]

Dear Alan:

In accordance with your request for a "Directors and Officers Liability" quotation and based on the information submitted, we are pleased to offer the following proposal:

LIMIT OF LIABILITY (Inclusive of Defense Cost, Charges & Expenses)	RETENTION (Each Loss)	PREMIUM (3 Yrs. Prepaid) ONE YEAR ONLY	PREMIUM (3 Yrs. Annual Installments)
$1,000,000.	$5,000. Ea. Director or Officer	$6,500.	
	$20,000. Aggregate Director or Offi[illegible]		
	$20,000. Corporate Reimbursement		

SEE THE FOLLOWING CONDITIONS

I-66-Q

A-61

The above proposal(s) is/are inclusive of the following:

1. Coverage will apply to the Parent Company and all majority controlled subsidiaries, unless otherwise indicated.
2. Exclusion of all pending and prior litigation as well as all future losses based upon claims arising out of said pending and prior litigation, backdated to 1
3. Broad Form Nuclear Energy Liability Exclusion.
4. E.R.I.S.A. Exclusion.
5. Pollution and Contamination Exclusion.
6. Commissions Exclusion.
7. B.I./P.D. Endorsement.
8. 90 Day Discovery.
9. Exclusion of claims arising out of one insured vs. another.
10. Policy to include 5% participation on part of Insured.

c SUBJECT TO:
(1.) Schedule of loans to D & O's.

The proposal(s) is/are also subject to Insurance Department Approval and will expire [redacted] 12/1/77.

The Commission payable is 15 %.

Even though this is a difficult class of business at this time, we are pleased to furnish this proposal. If you control the Insured's other lines, we would very much like to have the opportunity to underwrite the Property, Inland Marine, Life, Group Travel Accident and Voluntary Travel Accident coverage.

We thank you for the opportunity to quote and look forward to being of service to you in the near future.

Very truly yours,

E. C. Sullivan
Underwriter
Financial Services Division

I-C7-Q
A-6

REQUIRED UNDERWRITING INFORMATION

The following information is required on all Directors & Officers risks for both new lines and renewals.

Main Corps., Small Corps., Non-Profit

1. Application

The application is the most important underwriting information that an Underwriter has at his disposal, particularly the questions concerning claims and litigation and the overall warranties contained within. A copy of the application is attached to all issued policies and as the Declarations page states, is considered a part of the contract. Any D&O proposals offered are predicated upon our receiving a "Satisfactorily" completed application and no coverage should be bound without such application in hand. The application must be dated and signed by an individual whose position is that of an Executive Officer or higher. The application must contain an original signature and not a photocopy. The date the application was signed must be fairly recent in order to be satisfactory for binding and/or issuance purposes. The Underwriter must pay particular attention to any application received that has been amended by the broker or the Insured. Very often these amendments are an attempt to obtain either severability or continuity of coverage. In situations such as this, the application would not be acceptable and a new "unamended" application must be requested. All the questions contained within the application must be answered. Frequently the answers to the claims and litigation questions are lengthy and exceed the space allotted by the application thereby forcing the individual completing the application to answer the question more fully with an attached statement. In issuing a policy with an application containing such attachments, the Underwriter must have a copy of the attachments included with each copy of the policy.

We currently use four National Union applications: 8760 for Main and Small Corporations; 8759 for Non-Profit Organizations; 8761 for Financial Institutions;

EXHIBIT "E"

and 8853 for Renewals. It is important to note that f9 of the 8853 renewal application must be completed with a date in order that the warranties and statements contained within the application attached to the Insured's original policy are maintained on the renewal policy.

2. A Copy of the Latest Audited Annual Report

The Annual Report normally includes an overall operational review and a detailed financial review of the company for the last two fiscal years including Balance Sheets, Earnings Statements and Interpretive Notes. Very often a message or report to the shareholders from the president or chairman of the board will be included.

3. A Copy of the Latest Interim Report

Depending upon the anniversary date of the annual report submitted, it might be possible to obtain a copy of any subsequently issued interim reports which are issued on either a quarterly or monthly basis.

4. A Copy of the Latest 10K Report

Any publicly traded corporation is required to file an annual report with the Securities and Exchange Commission known as a 10K. This is usually a lengthy report which is useful in reviewing the operations (Item 1), the major shareholders and a listing of subsidiaries including the percentage of ownership (Item 4) and current litigation (Item 5).

5. A Copy of the Indemnification Clause

Although we normally only require a copy of the Indemnification Clause that is contained within the By-laws, sometimes a complete copy of the By-laws is needed in order to determine whether a company is profit making or non-profit, or how the Directors or Officers are appointed or elected, or whether there is any governmental or political control or relationship.

6. Dun & Bradstreet Report

A D&B Report should be ordered for each profit making corporation. It is the

EXHIBIT NO. D&O IN: 00005

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

U.S. COURT OF APPEALS
ELEVENTH CIRCUIT
FILED
NOV 15 1982

A.T. KNIGHT, G. GERALD KUNES, and KUNES & KUNES,

Plaintiff-Appellants,

vs.

NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA. and TONEY BROTHERS BANK,

Defendants-Appellees.

Civil Action No. 81-7865

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that A.T. KNIGHT, et al, the Plaintiffs, above named, hereby appeal to the Supreme Court of the United States from the Summary Judgment entered in this action on the 6th day of October, 1981, and the Judgment, dated August 20, 1982, of the United States Court of Appeals for the Eleventh Circuit, affirming the District Court Judgment, and the Order of October 18, 1982 of the United States Court of Appeals for the Eleventh Circuit denying a Motion for Rehearing in this cause.

This appeal is taken pursuant to 28 U.S.C. §1254.

This the 11th day of November, 1982.

G. Gerald Kunes
Attorney for the Plaintiffs

Post Office Box 985
236 East Second Street
Tifton, Georgia 31794
912-382-2303